17. Ameritech's costs for any modifications to its existing facilities that are required to permit unbundled access in accordance with the FCC's First Report and Order should be recovered in a nondiscriminatory, competitively neutral manner. Rather than placing the entire burden on the new local competitors, none of which currently has any significant share of the local exchange and exchange access market, with the cost of making the modifications necessary to permit all parties to compete in the local exchange market, Ameritech itself must pay an appropriate share of that cost.[6]

18. It is interesting to note that Ameritech proposes to provide unbundled local switching in combination with its own operator services and directory assistance elements. Ameritech includes, as part of its "standard" unbundled local switching element, access to Ameritech's operator services and directory assistance. As discussed further below, if a competing carrier wants to combine Ameritech's unbundled

[6] As an example of a competitively neutral cost recovery, the FCC in its First Report and Order on Telephone Number Portability (CC Dkt. No. 95-116), found that a competitively neutral cost recovery standard for interim number portability was appropriate because "number portability is a network function that is required for a carrier to compete with the carrier that is already serving a customer." (Telephone Number Portability, First Report and Order, ¶ 131). The same rationale applies to customized routing and unbundled local switching. In defining competitively neutral cost recovery, the FCC found that "the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer." (¶ 132). Clearly, if a competing carrier's costs to serve a customer via unbundled local switching (which by definition includes customized routing) were inflated beyond the incumbent's efficient forward-looking costs (which include a reasonable profit) due to discriminatory charges for routing, that competing carrier would indeed be harmed by the disparate effects of those costs. While the incumbent could serve the customer and incur no incremental cost for routing traffic to its preference (current "standard line class code" routing), the competing carrier that purchased unbundled local switching would incur an additional cost to serve that customer with its preferred routing. In response to the FCC LNP order, Ameritech has repriced its interim LNP services at $0.00 pending the resolution of a cost recovery investigation by the Commission. Ameritech, as well as other carriers, are tracking the costs of interim LNP to assure accurate cost recovery when the cost recovery mechanism is determined.

local switching element with its own operator services or directory assistance, it must make a special request to Ameritech for such routing. In effect, this special request process establishes an obstacle for carriers that seek to obtain the combined elements they are most likely to require in combination (e.g., loop and switch), while at the same time, and in a completely contradictory manner, Ameritech has created a similar obstacle for carriers that seek to combine an Ameritech-provided element (local switching) with the element carriers are most likely to self-provision in the near term (operator services and directory assistance).

E. Failure to Provide Customized Routing of OS/DA

19. A salient example of a customized routing issue is access to operator services and directory assistance ("OS/DA"). AT&T's entry strategy relies on the use of AT&T's operator services and directory assistance platforms. AT&T believes that its OS/DA platforms are a valuable asset that differentiates its services from that of its rivals, and it wishes to provide its own operator and directory assistance services to local service customers in situations where it is providing local services, either through local services resale or through purchase of unbundled network elements. AT&T wants all operator and directory assistance calls from AT&T local service customers to be routed from the incumbent LEC switch to AT&T's OS/DA platforms. This can be accomplished by customized routing. The technical feasibility of customized routing has been recognized by a number of RBOCs, such as Bell Atlantic, Southwestern Bell, and

NYNEX, and AT&T has a commitment from these RBOCs to implement that routing. Notwithstanding the actions of the other RBOCs, Ameritech claims that customized routing is not technically feasible.

20. The FCC has ordered the incumbent LECs, "to the extent technically feasible, to provide customized routing, which would include such routing to a competitor's operator services or directory assistance platform." First Report and Order, ¶536; see also, ¶412.

21. On the issue of technical feasibility, the ILEC is required to demonstrate by clear and convincing evidence to a state commission that a network element, combination thereof or proposed use of such an element is not technically feasible. Id. § 51.315(e). The definition of "technically feasible" does not turn on questions of economics or accounting but rather on "technical or operational concerns that prevent the fulfillment of a request." Id. § 51 (definitions). Thus, for example, it is not sufficient for an ILEC to claim merely that a request for a combination of unbundled network elements will require development or network modifications; instead, the ILEC must prove to the state commission by the high standard of clear and convincing evidence that the proposed unbundling cannot be done.

22. Ameritech has resisted making available the platform without OS/DA as a standard offer. AT&T prevailed on the issue before the arbitration panel in Michigan, which found as factfinder that "Ameritech has not demonstrated to this Panel that this offering is technically infeasible."[7] The Commission observed that technical feasibility was a "legitimate concern" and ruled that the unbundled platform without OS/DA should be offered through the bona fide request process and not as a standard offering.[8]

23. The Commission did not, however, make a finding that customized routing is technically infeasible. Thus, Ameritech cannot claim that it has satisfied its obligation to demonstrate by "clear and convincing" evidence that customized routing is not technically feasible. AT&T has conducted a study of the customized routing issue that demonstrates that such routing is technically feasible. Attachment 1 to this affidavit, entitled "AT&T Report and Findings on Technical Solutions Relative to Routing of Local Operator Service and Directory Assistance to the AT&T Switched Network in the Total Service Resale or Unbundled Network Element Environment" describes, in detail, the technical feasibility of routing OS/DA and should be considered in determining whether Ameritech has been able to demonstrate by clear and convincing

[7] Decision of Arbitration Panel, AT&T Communications of Michigan, Inc. Case No. U-11151 et seq., (Mich. PSC October 28, 1996).

[8] Order Approving Agreement Adopted by Arbitration, AT&T Communications of Michigan, Inc., Case No. U-11151 et seq. (Mich. PSC November 26, 1996).

evidence the technical infeasibility of such routing for any particular switch or switch type.

24. As set forth in that study, a number of options are available to provide customized routing to a new entrant's traffic for its own OS/DA platforms. In addition to the use of line class codes, these options include but are not limited to using AIN triggers in the switch to get routing information from an external data base or using a "mini-switch" inserted between the LEC end office switches and its OS/DA platforms to screen traffic before it arrives at the LEC's platform. Although ultimately it is up to Ameritech to determine which solution, or combination of solutions, best suits its existing network, there is no doubt that customized routing can be performed on its network.

25. Based on my experience and knowledge of these solutions and the switching technology, the use of AIN triggers is the preferred solution as it is significantly easier to administer than using line class codes and is the better long term solution. The AIN solution for customized routing involves three basic steps: 1) activation of the switch triggers; 2) development of the service control point (SCP) data base which will provide the routing instructions to the switch; and 3) development of a support system to keep the SCP data base updated. This technology is not new to the industry, and a similar external data base inquiry process is used today by the LECs to

determine the proper carrier routing for each and every toll free (800 or 888) number dialed.

26. Bell Atlantic, for example, has proposed an AIN solution for this customized routing for the majority of its local switches. Bell Atlantic has committed to complete the deployment of this solution by the end of June, 1997. Bell Atlantic also agreed that it will work cooperatively with AT&T to tailor the deployment schedule to meet AT&T's specific market entry needs. SWB has also committed to use AIN services to provide customized routing to AT&T's OS/DA platforms by mid-1997.

27. The AIN solution does not work in a small number of analog switches that are not equipped to handle line class codes or AIN. In those few circumstances where the AIN solution is not available, another approach should be taken. In the Bell Atlantic situation mentioned above, in the case of older switch technologies that will not support the AIN solution, Bell Atlantic plans to deploy a "mini-switch" between its local end office switch and its OS/DA platforms. This mini-switch will serve as a screening tool to determine if a call destined to its operator/directory platforms originated from a competitive carrier and, if so, it will route these calls to the appropriate trunk groups to get them to the CLEC for handling by their own platform. If the mini-switch option is not available, and no other means of customized routing is available, then nondiscriminatory branding should be required, with the calls being sent to

Ameritech's operator and directory assistance platforms where branding would have to occur via a subsequent table look-up or a data base dip based on the customer's number.

28. Ameritech has criticized the AIN solution, saying that it may lead to increased query/response delay for all calls, may increase the possibility of network failure, and may have interfere with other AIN services. Heinmiller Rebuttal Test., pp. 16-17. In fact, different forms of AIN triggers are available, and one such trigger uses dialed digits and would affect only OS/DA calls and route them to the appropriate carrier based on a look-up table. This form of AIN trigger would not encounter the associated query/response delay for all calls and would not have the network failure consequences that Ameritech has alleged. In addition, it would not interfere with other AIN services. When it wants, Ameritech can be creative in devising responses to issues, but here Ameritech is merely advancing arguments to hinder the offering of a competitor, and it has made no showing that the AIN or other approaches are not technically feasible.

II. AMERITECH HAS FAILED TO IMPLEMENT INTEROFFICE TRANSPORT AS REQUIRED BY SECTION 271.

29. Section 271(c)(2)(B)(v) requires that an ILEC provide "[l]ocal transport from the trunk side of wireline local exchange carrier switch unbundled from switching or other services." In addition, Section 271(c)(2)(B)(ii) requires access to this unbundled element to be "nondiscriminatory" and "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Thus, in order to satisfy this checklist item, Ameritech must comply with Section 251(c)(3) -- including all implementing regulations of the FCC as well as any additional implementing rules the Michigan Commission may have adopted pursuant to Section 251(d)(3) -- as well as the pricing standards of Sections 251(c)(3) and 252(d).

30. Ameritech is refusing to offer common transport to purchasers of the ULS and unbundled platform and has offered a uniquely distorted set of transport services. In addition to dedicated transport, Ameritech offers "shared" transport, which requires a requesting carrier to purchase dedicated transmission facilities and then arrange to share these dedicated facilities with one or more other competing carriers if the purchaser so wishes.[9] For purchasers of the unbundled switch or unbundled platform

[9] A proposed tariff that Ameritech filed in Illinois defined Shared Transport as follows:
"Shared Transport will be dedicated to a group of two or more carriers. As a group, the carriers must order an entire facility. In addition, one requesting carrier must be assigned as the carrier of record ('primary carrier') for purposes of testing, provisioning and maintaining the element." Ameritech 9/27/96 Tariff Filing (Suspended), Part 19, Section 12, Sheet No. 12, ¶ 3.4.B.

who have insufficient volumes to purchase dedicated or "shared" transport, Ameritech offers a hybrid transport alternative that requires the purchaser to pay high retail rates for what is essentially intraMSA toll service.

31. In effect, with this offering, Ameritech seeks to bar other carriers from purchasing usage of existing interoffice transmission facilities on a shared basis with Ameritech's own traffic. With this dedicated/"shared" transport offering, Ameritech makes new competitors either duplicate Ameritech's transport network to transport calls or otherwise pay high retail rates for Ameritech's alternative transport service (i.e. intraMSA toll service), the result of which is a de facto bundling of local switching with other (retail) services.

32. These offerings fail to provide the unbundled transport as required by the Act. The requirements of transport unbundling and shared transport were designed to permit transport of calls over all trunks in an ILEC's transport network. Such unbundling does not occur under Ameritech's approach as Ameritech never allows a CLEC end users' traffic to share transport with Ameritech end users' traffic. Once the CLEC purchases the shared transport element, the transport belongs to the CLEC, and not the ILEC, and the CLEC becomes a reseller of transport services. The shared transport

option in effect is dedicated transport, and Ameritech is merely agreeing that it will not limit a CLEC's use of the dedicated facilities-- which itself would be inconsistent with the Act. In essence, under Ameritech's proposal, all parties seeking to purchase unbundled transport on a minute of use basis would be required to either form joint purchasing agreements or solicit resale agreements with other competing carriers. In addition, Ameritech would be the only entity that would never share traffic with the CLECs.

33. This offering of "shared" transport is totally unrealistic and would impose significant costs on any CLEC choosing the "shared" transport option. CLECs generally will not have the volume of traffic to justify purchasing dedicated transport from Ameritech. The "shared" transport option would require significant CLEC expenditures to pay Ameritech for what is in effect dedicated transport. Ameritech suggests that a CLEC would have the choice of incurring the time and expense to put together a group of carriers that would "share" the dedicated facilities. The expense and effort to manage the shared arrangement make it totally impractical.

34. Ameritech's proposal is designed to undermine the viability of the unbundled switching element and unbundled platform. Ameritech knows that the "shared" transport option is unrealistic and impractical for most CLECs. Ameritech also knows that Ameritech lacks the physical facilities to make transport capacity available in the form of dedicated and "shared" transport that it proposes. If a number of carriers did

seek to use Ameritech's shared transport system, it would overwhelm Ameritech's transport facilities and require significant overbuilding, along with the attendant inefficiencies that such overbuilding would entail. Clearly, Ameritech does not envision that CLECs will use the "shared" transport option, but instead will be forced to use its "alternative" transport option with its high retail rates.

35. Interestingly, although Ameritech has claimed that there are severe constraints on its ability to selectively route OS/DA calls, its transport proposal would require Ameritech to selectively route each call to the proper "dedicated" or "shared" trunk group. Thus, in situations in which competitors do not want selective routing, Ameritech indicates that it is available. But in situation in which a competing LEC wants selective routing to route calls to specified trunk groups, Ameritech pleads that such service is not technically feasible. Clearly, this transport proposal is part of Ameritech's long-running campaign to undermine implementation of the unbundled platform and the development of competition in the local exchange.

36. Ameritech has also taken the position that purchasers of the alternative local transport option are not entitled to the terminating access charges and that Ameritech is the appropriate entity to charge the interexchange carriers for terminating access. Only subscribers purchasing Ameritech's dedicated or "shared" transport are permitted to charge interexchange carriers for terminating access under

Ameritech's scheme. Gebhardt Rebuttal Test. at 51-52. As yet further evidence that Ameritech does not envision CLECs will purchase dedicated or "shared" transport, Ameritech is not providing to CLECs the billing information necessary to bill for terminating access.

37. This transport issue has a fundamental effect on a CLEC's business decisions regarding entry into the local exchange. The Act and the FCC clearly contemplated that CLECs might use resale, facilities-based operation, or the purchase of unbundled elements, or some combination thereof, as entry strategies in providing local exchange service. Ameritech's dedicated and "shared" transport will not be used because they are too expensive, impractical, and cannot be implemented. The only realistic option will be Ameritech's hybrid alternative transport option, the use of which will simply drive up the costs for CLECs. Without the availability of common transport, the unbundled switching element and the unbundled platform may not be commercially viable, and this will delay entry by CLECs and reduce their ability to compete with Ameritech. In the absence of a fully functioning and legitimate shared transport option, Ameritech cannot be found to have fully implemented its obligation under Section 271 to provide unbundled transport on a nondiscriminatory basis.

III. AMERITECH AND THE CLECS NEED OPERATIONAL EXPERIENCE WITH THE SYSTEMS, PROCEDURES, AND INTERFACES TO ENSURE THAT COMPETITION CAN DEVELOP.

38. It is vitally important that there be a period to permit Ameritech and the CLECs to work out transitional issues and ensure that the unbundling of network elements has taken place that permits the CLECs to compete with Ameritech. The Federal Act provides for a total overhaul of the local exchange with the goal of introducing competition and dismantling the monopoly local exchange bottleneck. As recently as the summer of 1996, officials from Ameritech were stating that aspects of unbundling were simply unachievable. For example, with respect to the unbundled platform, Ameritech indicated that it was nothing more than "concept" that could not be implemented in the near term:

> "There are a host of provisioning and pricing issues that have not been addressed in any meaningful way. . . . In reality, the parties never progressed beyond the 'concept' stage in discussing this service alternative. . . . Moreover, the technical and operational issues associated with an unbundled switch platform have not been addressed at all. . . . [T]here would likely be endless debates over: (1) the size of the capacity blocks which resellers must purchase; (2) the length of the term commitments; (3) how capacity would be measured; and (4) whether the rate structure would be flat-rated or usage-sensitive." Initial Brief of Illinois Bell Telephone Co., Docket Nos. 95-0458/95-0531 (the Illinois Wholesale Order case) pp. 109-110.

In light of Ameritech's claim that it has fully implemented the unbundling requirements, these issues are in Ameritech's view apparently all resolved. Although Ameritech claims that it has already implemented unbundling, there remain a number of operational and technical matters that must be resolved, and there will doubtless be other issues similar to

the difference on "shared" transport that will arise only during the course of implementation. These matters include several of the unbundling issues described in this testimony, as well as the signaling and OSS issues -- which all require new, complicated, and untested interfaces and intercarrier arrangements. Before an ILEC can claim that network unbundling has been "fully implemented," a number of distinct and interrelated systems and interfaces have to be subjected to operational testing in the marketplace to work out differences and to determine that these systems and interfaces are sufficient to support the volumes necessary to meet the needs of carriers and end users.

39. Testing and operational experience is important because it provides an opportunity for Ameritech and the new service providers to resolve the implementation problems that will undoubtedly arise and to adjust to the new environment created by the 1996 Telecommunications Act. As an example, if the preordering, ordering, provisioning, and maintenance services associated with the unbundled platform are not provided by Ameritech on a timely basis, the CLEC customer would likely perceive the resulting provisioning delay and inferior customer service to be the fault of the CLEC and not Ameritech. In addition, it will be necessary to determine that Ameritech is in a position to handle large numbers of orders so that customers can obtain timely service in switching their local service provider and not be subject to delays that would affect the competitive choices of those customers. Testing and operational experience will permit carriers and regulators to correct the problems that will arise in the

new environment and to make a determination that Ameritech has implemented the systems necessary to permit the marketplace to work. In short, full implementation of the requirements of the Federal Act and of the FCC and this Commission must be demonstrated by operation in the marketplace at competitive volumes and cannot be determined solely by written statements or promises of action in the future. Ameritech has very little incentive to speed the opening of the local monopoly bottleneck, particularly if it can gain in-region interLATA relief before competition in the local exchange becomes a reality. The period of testing and operational experience at competitive volumes ensures that the interfaces and systems work and will permit the development of local exchange competition.

IV. CONCLUSION

40. The foregoing is by no means an exhaustive listing of all the problems with Ameritech's filing on the issue of unbundled elements. Additional problems include, but are not limited to, Ameritech's proposal for reciprocal compensation, the lack of written procedures for AIN services, and discriminatory time periods for loop provisioning. The foregoing does demonstrate, however, that Ameritech is still far from complying with the competitive checklist of Section 271, and on these grounds alone, its application for in-region interLATA relief must be denied.

VERIFICATION

I, Robert Sherry, do on oath depose and state that the facts contained in the foregoing affidavit are true and correct to the best of my knowledge and belief.

Robert A Sherry

SUBSCRIBED AND SWORN to
before me this 7th day of
January, 1997.

Margaret M. Plucinsky

Notary Public

"OFFICIAL SEAL"
Margaret M. Plucinsky
Notary Public, State of Illinois
My Commission Expires 05/11/99

STATE OF MICHIGAN
MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to consider Ameritech Michigan's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996	))))	No. U - 11104

AFFIDAVIT OF WILLIAM G. LESTER ON BEHALF OF AT&T COMMUNICATIONS OF MICHIGAN, INC.

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, William G. Lester, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is William G. Lester. My business address is 1 Oak Way, Berkeley Heights, New Jersey 07922-2724. I am employed by AT&T Corp. as a Manager in the Local Infrastructure and Access Management Organization. In that capacity, I am responsible for providing corporate support to AT&T's regional management for

right-of-way planning and route design of AT&T's outside plant infrastructure in several Midwestern states, including the state of Michigan.

2. My educational background, work experience and qualifications regarding the matters in this affidavit are as follows. I attended the New Jersey Institute of Technology (formerly Newark College of Engineering) from 1969 to 1972, and pursued a degree in Electrical Engineering. I then transferred to Southern Illinois University where I received a Bachelors of Arts degree in Design Science in 1974. For the next twenty years I was employed in the cable television industry in various aspects of outside plant engineering and construction as well as video and audio systems engineering. This experience included both "hands on" field experience as well as the management of field operations, television production engineering and, eventually, an assignment as general manager of an urban cable television system. In 1995, I joined AT&T in my present capacity.

3. The purpose of my testimony is to discuss a new entrant's requirements for nondiscriminatory access to the network distribution structure owned or controlled by Ameritech. I will provide an overview of the issues relating to poles, ducts, conduits and rights-of-way including the requirement for nondiscriminatory access to these

essential facilities as one of the items which must exist in fact, rather than in theory, before Ameritech could satisfy the requirements of the competitive checklist under Section 271(c)(2)(B)(iii) of the Telecommunications Act of 1996 ("the Act"). The remainder of my testimony outlines procedures and information which a new entrant would need in order efficiently and cost effectively to construct a facilities-based interconnected local network and why Ameritech's assertion that it provides access to poles, ducts, conduits and rights-of-way it owns or controls falls far short of the statutory mark.

4. One of the main problems with Ameritech's documentation is that it constantly refers to ill-defined procedures for obtaining access to its rights-of-way which will exist at some unspecified time in the future. This lack of specificity will likely lead to inordinate delays and unending disputes (and the further delays such disputes will entail) and severely constrain any new entrant's ability to design and construct its network facilities in a reasonable, rational and timely manner. Any such delays will benefit Ameritech by preventing the development of competitive facilities.

5. In the context of the access requirements under the federal Act, "poles, ducts, conduits and rights-of-way" should include entrance facilities, riser space in buildings,

the "strip" of land over or through which poles, conduit, buried cable, or other network distribution facilities are located and land planned or suitable for use for new conduit, manholes, controlled environment vaults, pedestals and the other telecommunication facilities a new entrant may need to place in order to efficiently "piggyback" along the distribution network of Ameritech. This encompasses all poles, ducts, conduits, rights-of-way, and other paths used for network distribution facilities in whatever physical form they take. They may also include telephone equipment closets; remote terminal equipment buildings, huts or enclosures; cross-connect cabinets, panels or boxes; equipment cabinets, pedestals or terminals; and any other infrastructure used to place telecommunications facilities. Ameritech typically uses the term "tructure" to refer to the network distribution facilities it is willing to make available to new entrants.

6. A broad, common-sense definition of poles, ducts, conduits and rights of way is necessary for the competitive market for local exchange telecommunications services to develop beyond the resale stage. In order to foster facilities-based competition, new entrants must be able to deploy their own facilities in order to reach potential customers throughout their service territory. In order to do so, new entrants must have access to all incumbent local exchange carrier network distribution facilities on a nondiscriminatory basis. The terms by which such access to poles, ducts, conduits and

rights-of-way will be provided stand as one of the key issues to be resolved in the transition to a competitive local telecommunications market.

7. As a long distance provider, AT&T has had only infrequent need to access the poles, ducts, conduit and rights-of-way of the local network owned by an incumbent LEC, such as Ameritech. When it did, it was usually in connection with linking its long distance switching centers to local switching offices. Structures that are involved in bringing network facilities directly to customers, such as entrance facilities to buildings, cross connect cabinets, equipment rooms and pedestals were not required since access to customers was purchased by the long distance carrier from the incumbent local exchange carrier as carrier access services. However, as new entrants seek to compete with incumbents such as Ameritech access to additional structure will be necessary for this facilities-based local service. Complete duplication of existing distribution facilities for each new entrant's network is not cost effective and would be a huge obstacle to competitive entry; nor is it practical in areas where there is limited room in available rights-of-way for the placement of new conduit, ducts and poles. Even if possible, the public will be likely to accept only so much disruption to their streets and thoroughfares for competitors to construct separate pathways or local distribution structure. To maximize competitive opportunities, then, it is essential that all necessary

structures be available on a non-discriminatory basis to all competing telecommunications providers.

8. My definition of the terms poles, ducts, conduits and rights of way, or "structures," as Ameritech refers to them, is consistent with the Act and the FCC's Order. Although the FCC did not expressly define the terms "poles, ducts, conduits and rights-of-way," in its August 8, 1996, Order, that Order did provide a very specific benchmark for addressing this issue when it stated that "the intent of Congress in section 224(f) was to permit ... telecommunications carriers to 'piggyback' along distribution networks owned and controlled by utilities." Further, the FCC stated that the directive of section 224(f)(1) of the Act "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields (FCC Order at ¶1123). AT&T's position regarding access to distribution network structures and the property upon which they are located is consistent with the Act's intent and the FCC's interpretation.

9. Section 251(b)(4) of the Federal Act imposes on Ameritech the "duty to afford access to the poles, ducts, conduits, and rights-of-way ... to competing providers of

telecommunications services on rates, terms, and conditions that are consistent with Section 224." Section 224 in turn provides that a utility such as Ameritech "shall provide ... any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it, on the same terms and conditions as the utility provides to itself or its affiliates." The competitive checklist of Section 271 requires that access be provided by the regional Bell operating company in accordance with the requirements of Section 224 at just and reasonable rates. Thus, the Act establishes a strict and comprehensive nondiscrimination standard and requires that such access be provided to other telecommunications providers even in the absence of any ongoing interconnection contract between Ameritech and the attaching party.

10. The FCC rules have explained the non-discriminatory standard and given some specific guidance on what must be done to meet it. If Ameritech denies access, it must give a detailed written explanation of the reasons for the denial within 45 days. If the capacity of the Ameritech structure is not sufficient to grant access, Ameritech must take all reasonable steps to create additional capacity, including modifying the structure or even acquiring additional right-of-way through condemnation proceedings if it has the legal ability to do so. Finally, the rules make it clear that Ameritech must treat itself and its affiliates no more favorably than it treats new entrants.

11. The common usage of the term "right-of-way", and the context within which it is used in both the Act and the FCC's order and rules governing access is the land upon, over, or through which telephone lines and other network distribution facilities pass or are located. Typically this includes the right to use land or other property to place poles, conduits, cables and other structures or equipment, or to provide passage to access such structures and equipment. The term "right-of-way" is not limited to specific legal interests in the underlying land itself. It includes all easements, licenses, leases or other permissions, obtained from either public or private third parties by the incumbent LEC as well as land or other property owned or leased by an incumbent telecommunications carrier and used, planned for use, or suitable for use for network distribution facilities. A "right-of-way" may run under, on, or above public or private property (including air space above public or private property). It also includes the right to use discrete spaces in buildings, building complexes or other locations. As I will discuss later, only this common usage of the term "right of way" is compatible with the practical implementation of the access requirements of the competitive checklist. Nevertheless, Ameritech has taken the position in arbitrations regarding local interconnection that the term should be construed in an extremely narrow fashion. Ameritech has argued, for example, that rights of way should be limited to property owned by third parties, not

property that Ameritech owns. Thus, while paying lip service to the concept of equal access, Ameritech is setting up a battlefield for competition where it, with its existing network already in place and under its control, will be able to control the critical passes.

12. Ameritech's narrow definition of rights of way already has been determined to be unduly limited in Michigan. The Arbitration Panel in Michigan found Ameritech's position to be inconsistent with both Michigan law regarding the definition of a right-of-way and federal law regarding the access requirements under Section 224(f) of the Act. The panel noted if Ameritech's definition were accepted, Ameritech could deny a new entrant the right to bury cable adjacent to Ameritech's own cable due to the fact that Ameritech owned the underlying property. That decision was issued on October 28, 1996 in MPSC Case Nos. U-11151/11152. Ameritech objected to the panel's ruling on this matter, but the Commission held that an entrant may have access to rights of way on property owned or controlled by Ameritech. Order of November 26, 1996 in MPSC Case Nos. U-11151/U-11152.

13. The arbitrator of the interconnection agreement between AT&T and Ameritech in Illinois also rejected the narrow and limited definition of a right-of-way advocated by Ameritech. Specifically, the arbitrator ruled that Ameritech could not exclude AT&T